

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WALTER L. TAMOSAITS, PHD,
an individual, and SANDRA B.
TAMOSAITS, representing the
marital community,

Plaintiffs,

vs.

URS CORPORATION, a Delaware
Corporation; URS ENERGY &
CONSTRUCTION, INC., an Ohio
Corporation, and the
DEPARTMENT OF ENERGY,

Defendants.

No. CV-11-5157-LRS

**ORDER RE PLAINTIFF'S
MOTION FOR ENTRY OF
FINAL JUDGMENT, *INTER ALIA***

BEFORE THE COURT is the Plaintiffs' Motion For Entry Of Final Judgment (ECF No. 101) and Motion For Certification Of Interlocutory Appeal pursuant to 28 U.S.C. §1292(b) (ECF No. 104). These motions are heard without oral argument.

Pursuant to Fed. R. Civ. P. 54(b), Plaintiffs ask the court to enter final judgment with regard to its "Order Re DOE's Motion To Dismiss" (ECF No. 97). That order dismissed DOE (U.S. Department of Energy) as a Defendant, one of the grounds being Plaintiffs had not exhausted administrative remedies against DOE as required by the Energy Reorganization Act (ERA), 42 U.S.C. §5851.¹ When the

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The other grounds for dismissal were that Plaintiffs failed to establish an

1 administrative complaint was dismissed by DOL on October 14, 2011, at the
2 request of Dr. Tamosaitis, it had not been pending against DOE for a full year as
3 required since DOE had not been added as a respondent until December 15, 2010.
4 This court's dismissal of DOE was with prejudice because it was not apparent that
5 Plaintiffs could re-institute administrative proceedings and exhaust their
6 administrative remedies against DOE considering more than 180 days has now
7 passed since the alleged violation of the ERA occurred, that being the July 2, 2010
8 transfer of Dr. Tamosaitis from the WTP.

9 In a subsequent separate order (ECF No. 100), the court granted summary
10 judgment to URS Corporation as a Defendant, one of the grounds being Plaintiffs
11 had not exhausted administrative remedies against URS Corporation as required by
12 the ERA.² When the administrative complaint was dismissed on October 14, 2011,
13 it had not been pending for a full year against URS Corporation which was added
14 as a respondent on September 7, 2011. This court observed that it appeared
15 Plaintiffs were now procedurally barred from seeking to exhaust administrative
16 remedies against URS Corporation because URS Corporation had not been added
17 as a respondent in the administrative proceedings until after 180 days had passed
18 since the July 2, 2010 transfer of Dr. Tamosaitis from the WTP. Plaintiffs do not
19 seek entry of a final judgment with regard to the order granting summary judgment
20

21 employer-employee relationship with DOE and requested relief that is
22
23 unavailable under the ERA.

24 ²

25 Summary judgment was also awarded on the wholly independent basis there
26 was no genuine issue of material fact that URS Corporation was not an employer
27 of the Plaintiffs.
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1 to URS Corporation.

2 Rule 54(b) provides:

3 When an action presents more than one claim for relief-
4 whether as a claim, counterclaim, crossclaim, or
5 third-party claim- or when multiple parties are
6 involved, the court may direct entry of a final
judgment as to one or more, but fewer than all,
claims or parties only if the court expressly
determines that there is no just reason for delay.

7 Entry of a final judgment under Rule 54(b) is proper where there are distinct
8 and severable claims and immediate review of the portions ruled upon will not
9 result in later duplicative proceedings in the trial or appellate court. *Wood v. GCC*
10 *Bend, LLC*, 422 F.3d 873, 878-79 (9th Cir. 2005).

11 Remaining Defendant, URS Energy & Construction, Inc. (URS E & C), has
12 now filed a Motion For Summary Judgment (ECF No. 108), and one of the grounds
13 raised is the alleged failure of Plaintiffs to exhaust administrative remedies with
14 regard to URS E & C. URS E & C contends Plaintiffs did not exhaust
15 administrative remedies against URS E & C for the same reason they did not
16 exhaust those remedies against DOE and URS Corporation, and that they are now
17 procedurally barred from seeking exhaustion of those remedies. The motion is
18 noted for hearing with oral argument on September 20.³

19 If the court finds administrative remedies have not been exhausted with
20 regard to URS E & C, and that Plaintiffs are now procedurally barred from pursuing
21 those remedies, that will be the end of the case as to all of the named Defendants
22 and final judgment will be entered from which an appeal can be taken. If, however,

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25 This court is scheduled to commence a bench trial on September 10 which may
26 last as long as six weeks and therefore, may require rescheduling of the oral
27 argument.
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1 the court finds administrative remedies have been exhausted with regard to URS E
2 & C, the possibility exists that at the conclusion of the case, URS E & C will seek
3 appellate review of this court's determination. Consequently, if the court were to
4 enter a Rule 54(b) final judgment as to DOE and an appeal were now taken seeking
5 review on the issue of administrative exhaustion, a later appeal by URS E & C
6 might present the same or a similar issue to the court of appeals. There is also,
7 however, the possibility a decision on an appeal from the entry of a Rule 54(b) final
8 judgment as to DOE could be dispositive of the administrative exhaustion issue
9 with regard to both URS Corporation and URS E & C such that there would not be
10 a duplicative appeal at a subsequent date.

11 In any event, it is apparent the best course for now is to stay resolution of the
12 Motion For Entry Of Final Judgment pending resolution of URS E & C's recently
13 filed Motion For Summary Judgment. The same goes for Plaintiffs' Motion For
14 Certification Of Interlocutory Appeal pursuant to 28 U.S.C. §1292(b) (ECF No.
15 104) regarding the court's "Order Granting Motion To Strike Jury Demand" (ECF
16 No. 99). If the court grants URS E & C's Motion For Summary Judgment, a final
17 judgment will be entered in favor of all Defendants. All issues adjudicated,
18 including administrative exhaustion and right to a jury trial, can then be appealed
19 to the Ninth Circuit. If summary judgment is not granted, the court will consider
20 at that time whether certification of an interlocutory appeal is appropriate with
21 regard to the issue of right to a jury trial.

22 Trial is not scheduled to commence until June 24, 2013, making it possible
23 that if final judgment were entered with regard to DOE, and an interlocutory appeal
24 certified regarding the right to a jury trial, those appeals could be heard and
25 determined prior to trial. If one or both of these occur, the court will consider how
26 that may impact the existing trial schedule and whether any modification of the
27 same is warranted. A significant factor is the uncertainty of when the court will
28 hear oral argument and rule on URS E & C's Motion For Summary Judgment.

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1 For the reasons set forth above, Plaintiffs' Motion For Entry Of Final
2 Judgment (ECF No. 101) and Motion For Certification Of Interlocutory Appeal
3 pursuant to 28 U.S.C. §1292(b) (ECF No. 104), are **STAYED** pending resolution
4 of URS E & C's Motion For Summary Judgment (ECF No. 108).

5 **IT IS SO ORDERED.** The District Executive shall forward copies this
6 order to counsel of record.

7 **DATED** this 24th of July, 2012.

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10 */s/ Lonny R. Suko*

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LONNY R. SUKO
United States District Judge